IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

CRL.A.No. 149 of 2004()

SC.236/2000 of ADDL.DISTRICT & SESSIONS COURT (ADHOC-I), KOTTAYAM
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APPELLANT:

BHASKARAN, S/O. THONDHARY,
C.NO.7187, CENTRAL PRISON,
TRIVANDRUM-695 012.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI C.M.KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & K. HEMA, JJ.

CRL. APPEAL NO. 149 OF 2004

DATED THIS, THE 6TH DAY OF AUGUST, 2007.

JUDGMENT

Hema, J.

The appellant was convicted and sentenced by the Additional District and Sessions Judge, Adhoc I, Kottayam, to undergo imprisonment for life under Section 302 of the Indian Penal Code (for short the I.P.C.). He was also convicted under Section 3 of the Explosive Substance Act, 1908 and sentenced to undergo Rigorous Imprisonment for five years. The sentences are ordered to run concurrently. The said conviction and sentence are challenged in this appeal.

2. According to the prosecution, the deceased Ammini (hereinafter referred to as 'the deceased') and the accused were living together as husband and wife in the room where they were residing together. Both of them had living spouses and children in the wedlock. They had an illicit relationship and were residing in the western side of a building which was occupied by two more families. In the centre room of the house, PW.1 was residing with his wife and in the eastern portion of the building, another family. According to the prosecution, the deceased decided to leave the

accused and join her husband and children as requested by her son PW.7. She decided to go to her house on 20.11.1998. This was not to the liking of the accused and hence in the midnight of 19.11.1998 (ie. at about 4.20 A.M. on 20.11.1998) the accused lighted a beedi, took a puff and set fire to the fuse wire which was attached to the explosive devise concealed under the pillow and the explosive device exploded and the deceased sustained fatal injuries. The accused also sustained injuries on his right hand and thereafter he inflicted injuries on his neck and attempted to commit suicide by cutting his throat with a knife, M.O.1. The accused was, however, charge sheeted only for offence under Section 302 I.P.C. for committing murder of deceased Ammini.

3. The neighbours were alerted by the cry of the deceased and before reaching the room where the deceased and the accused were residing, they heard an explosion. Police help was sought for and the police came to the scene and opened the door by force. While the deceased and the accused were found laying on the same cot, deceased was found to be dead; but the accused was conscious. He was removed to the hospital and treated there. He was arrested on 11.2.1999 from the hospital and a crime was registered on the basis of the First Information Ext.P1, on 20.11.1998. The First Information Report was registered by the Sub Inspector of Police, PW.15

on the basis of a statement given by PW.2. Investigation was taken up by the Circle Inspector of Police, and inquest was conducted by PW.12. Ext.P7 is the inquest report and the body was sent for post mortem examination to PW.10 and the certificate is Ext.P5. The scene was inspected by the Forensic Expert attached to the District Police Office at Kottayam, on 21.11.1998. After completion of the investigation, charge sheet was laid against the accused.

4. The prosecution examined PWs 1 to 16, marked Exts.P1 to P17 and M.O. 1 to M.O. 29 series on its side. Exts. C1 and C2 were also marked. The accused, when questioned under Section 313 of the Code of Criminal Procedure, pleaded innocence and came forward with a defence case that he is not aware as to how injuries were sustained by the deceased . He gave his own version regarding the incident and stated that somebody cut his throat and inflicted injuries on him.

5. On an analysis of the evidence adduced in this case, the court below found that the chain of evidence adduced by the prosecution is complete and did not leave any reasonable grounds for the conclusion consistent with the innocence of the accused and that it shows that in all probability, the accused, with the intention to murder the deceased, has assembled the improvised explosive device making use of the materials

purchased from the shop of PW.6 and concealed it beneath the pillow between the mattress and the pillow and went to sleep in the cot where the deceased was also sleeping and at about 4.15 AM on 20.11.1998 he lighted the fuse wire of the explosive device and it exploded with big bang causing fatal injuries to the head and chest of Thankamani who died instantaneously. It was also held that in the same blast the accused also sustained serious injuries on the right elbow. He sustained two incised injuries noted as Nos. 1 and 2 in Ext.P6, which in all probability appeared to be self inflicted using M.O.1 as alleged by the prosecution. The above findings were entered on the basis of the alleged circumstantial evidence proved by the prosecution on the heads: (i) motive (ii) purchase of explosive substance by the accused and (iii) the medical evidence. The court found in paragraph 31 of the judgment that the definite case of the prosecution is that the accused came to realise that the deceased will leave him for ever and return to her first husband and children which infuriated him and hence he decided to kill her and also to commit suicide. The lower court found that it has come out from the evidence of PWs 1 to 3, PW.5 and PW.7 that the deceased decided to leave the accused and return to her first husband on 20.11.1998 and this evidence remain unaffected in spite of cross examination of the witness by the learned defence counsel. The lower

court also found that the evidence of PW.7 shows that the accused had been residing along with the deceased and on the previous day, there was a quarrel between the deceased and the accused and that she had expressed her idea to leave the accused for ever on 20.11.1998. According to the lower court, even though PW.7 was cross examined at length, nothing material was brought out to discredit this part of his testimony. On going through the evidence of PW.7, we find that his evidence does not disclose any direct evidence regarding the quarrel. In the chief examination he deposed that on 19th there was a quarrel between the accused and the deceased and the deceased said that she was leaving. Though the prosecution does not have any such case as per the records produced by them that there was a quarrel between the deceased and the accused, PW.7 has come forward with such a version while examined in chief. But in cross examination he admitted that he had not seen the relative of the deceased Thankamani coming to the house or any quarrel occurring in the house. On a reading of the evidence of PW.7, it is not clear as to whether he was an eye witness to the alleged quarrel. The time when the incident occurred or the presence of the witness at the time of the said quarrel is not revealed from the evidence given by PW.7. His evidence is also not supported by other evidence in the case. Nobody has a case that there was a

quarrel between the accused and the deceased on 19th and she had told during the quarrel that she was leaving the accused.

6. PW.1 is the next-door neighbour of the deceased and the accused. He has not given any evidence that there was a quarrel between the deceased and the accused on the previous day of the incident on 19th and that she had told the accused that she is leaving. Of course, PW.1 has stated that a quarrel occurred between the accused and the deceased on one day in respect of the deceased leaving the accused. The particulars regarding the day, the time etc. at which the quarrel occurred is not revealed from the evidence of PW.1. It has come out from his evidence that PW.1 comes back only during night and he will not be available during the day time. There is only a bald assertion that there was a quarrel; but there are no details available in his evidence to satisfy the court that there was such a quarrel between the deceased and the accused. While PW.1 was cross examined as to whether the deceased and accused were on cordial terms and they were affectionate towards each other, he pleaded ignorance. he had not denied the suggestion made. It is relevant to mention in this context that as per the records of the prosecution, there was no quarrel between the deceased and the accused on the statement made by the deceased to the accused that she is leaving etc. It is also relevant to note that in the chief examination, PW.1

has stated that the son of the deceased came to the house about ten days prior to the incident and he came to know that on 20th deceased Thankamani was to leave the house. The source from which he came to know about it is not clear from his evidence. There is nothing to show that he had heard the deceased telling the accused that she is leaving him etc. He only stated in the chief examination that he came to understand that the accused did not like the idea of the deceased leaving him; but from what source he got this understanding is not available in his evidence. The evidence of PW.1 is also contrary to the evidence of the son of the deceased who said that he had gone to Thankamani about four days prior to the incident. But according to Pw.1, ten days prior to the incident, the son of the deceased had gone to the house.

7. The evidence of PW.2 makes a reference to the statement given by the deceased Thankamani that she would leave him the accused on 20th. But there is only a bare statement that the deceased has told the accused that she would leave him. Details are not available in his evidence. It is not clear as to whether he was an eye witness for any quarrel between the accused and the deceased. it is not stated by him on which day at which place and at what time, the said statement was made by the deceased Thankamani to the accused. He also stated generally that there used to be

quarrel between the deceased and the accused. The details were not stated by him. In cross examination when a question was put that he did not know about the quarrel between the accused and the deceased Thankamani's children, he admitted the same. He also admitted that he did not make any such statement to the police regarding the quarrel. Though he admitted in cross examination that he told the police that he knew the details of the husband of the deceased and his two sons, in cross examination he admitted that he did not know. The evidence of PW.1 regarding the quarrel, his acquaintance with the deceased's son etc. is too shabby to be acted upon. At any rate, the prosecution does not have a case that there was any previous quarrel between the accused and the deceased regarding her decision to leave the accused on 20th.

8. PW. 3 is the wife of PW.1. She deposed that one week prior to the incident, deceased Thankamani entrusted a packet with her and told her that she was going to join her former husband and asked her to keep the packet safe and that if the accused knows about it he would destroy the same. She has also stated that the deceased told her that on 20th she will be leaving the house and joining her former husband and children. Even if the entire evidence of PW.3 is accepted it will only show that the deceased Thankamani had decided to join her former husband and children. But there

is nothing in the evidence to show that this fact was known by the accused. On going through the findings of the court below, it is clear that the court has not entered a finding whether the accused was aware that the deceased Thankamani would join her former husband on 20.11.1998 and that she had taken such a decision. Even if the entire evidence given by PWs 1 to 3 and PW.7 is accepted in toto, it will not lead to the conclusion that the accused knew that the deceased would leave him on 20.11.1998 and that he was infuriated by the said decision. It is needless to say that unless the accused was aware that the deceased would join her former husband, it is not to his liking that he could develop a motive as alleged by the prosecution to commit murder. But this chain of circumstances or the link is missing in his case. The only fact that the deceased Thankamani decided to join her husband will not prove that the accused developed a motive to commit murder of the deceased Thankamani, unless and until it is proved to the satisfaction of the court that the decision was known to the accused and that it was against his will and wish.

9. The evidence of PW.5 is relevant in this context. PW.5 is the son of deceased Thankamani. It is clear from his evidence that his mother was living with the accused leaving the entire family and they have made attempt to get her back; but in spite of six years of their separation, deceased

Thankamani had not joined with them. Necessarily, the cause for such a separation was due to the illicit relationship of deceased Thankamani had with the accused and hence in all probabilities, PW.5 would have come grudge against the accused to speak against him. But even according to him, he had not told the accused about deceased Thankamani's decision to join the family. He deposed that deceased Thankamani tol him 3 to 4 days prior to the incident when he went to the place where she was residing with the accused that she would come to the family on 20.11.1998. But it has not come out from his evidence that the accused in any manner was aware of such a decision taken by his mother. It is specifically stated by him that he did not speak about this matter to the accused and he never used to talk to him. Therefore, in such circumstances, the evidence adduced by the prosecution will not prove conclusively that the accused was aware of the decision of deceased Thankamani to leave the house of the accused on 20.11.1998 against his will and wish and hence he was motivated to commit the murder. Though motive may not be quite relevant in a case where there are eye witnesses to the occurrence, in a case where the prosecution built up a case of circumstantial evidence, motive assumes greater significance. The prosecution is bound to prove the motive in such case to the satisfaction of the court. But even as per the allegations made by the prosecution, there

is no case that the accused knew about the decision of deceased Thankamani to leave him for ever and hence he was motivated.

10. The next piece of evidence relied upon by the learned Additional Sessions Judge is the recovery of certain articles like two caps, paste and fuse wire which was allegedly purchased by the accused from the shop of PW.6 on 19.11.1998. According to the prosecution, the accused had given information to the investigating officer, which is marked as Ext.P13(a), which is recorded in Ext.P13 mahazar prepared by the investigating officer Pw.15, that he had purchased cap, paste and the fuse wire from the shop situated near Kurisupalli junction in Pala and that he will show the shop if he is taken there and accordingly, on 12.2.1999 he was taken to the said shop and at 1.30 PM the mahazar Ext.P13 was prepared. PW.6 is the licensee of the shop. He deposed that he has licence for the shop and that he has licence ever since 1993 to sell gun powder and fuse wire. There is nothing in his evidence to incriminate the accused with the crime. He did not say whether the accused went to his shop and purchased the articles. PW.9 is another witness who was examined by the prosecution to prove the fact that the accused had purchased the material objects which were allegedly used by him to make the explosive device. He turned hostile to the prosecution. He stated that he was a salesman in the shop belonging to

PW.6. He stated that he did not know the accused. He also stated that he is not a worker in the shop where the explosives are sold. According to him, he was working in a shop where herbs are being sold. He deposed that he told the police that he did not know the accused. He was declared as hostile and cross examined. His evidence will not prove that the accused had gone to the shop and purchased any gun powder or fuse wire from his shop, though he could not deny whether the accused would have gone there and purchased gun powder and fuse wire. It is relevant to note that the suggestion made was that the accused has purchased gun powder and fuse wire from the shop of PW.6. The prosecution has not proved that the accused had purchased any gun powder from the shop of PW.6.

11. At any rate, pursuant to the statement Ext.P13(a), it cannot be said that any discovery of fact is made by the investigating officer. The information Ext.P13(a) becomes relevant under Section 27 of the Evidence Act only if it satisfies the requirement under Section 27 of the Act. But evidence is lacking to prove that the said statement has lead to any discovery of any material. The prosecution could not prove the fact that any such discovery was made particularly since the evidence of PW.6 and PW.9 does not reveal that the accused purchased the articles stated in Ext.P13(a) from the shop of PW.6 on the date and time as alleged by the prosecution.

The alleged conduct of the accused in leading PW.15 to the shop of PW.6 is also of no relevance and it does not incriminate the accused with the crime in the nature of the evidence given by PW.9 which would satisfy that the accused had gone to the shop and purchased any article such as cap, gun powder etc. from there. Another circumstance striking in this context is that according to the prosecution, the accused has made an explosive and made it to blast. As per the evidence of PW.13 the Scientific Assistant, District Mobile Laboratory, attached to the District Police office, Kottayam, gun powder is an essential material which would be required to make an explosive. He has deposed that gun powder and fuse wire by themselves will not cause explosion unless it is confined to some hard object. But even as per Ext.P13(a) itself, there is no case for the prosecution as per its admitted case that the accused had purchased any gun powder which could be used by him to make an explosive. In the absence of possession of any gun powder with the accused, it is not cognizable as to how he could have made an explosive as alleged by the prosecution. The lower court, however, entered a finding that "the same technics used for blasting rocks using gun powder, cap and fuse wire could be easily used for making a group explosive device and not much technical knowledge is need for doing so." Though when we take into consideration the totality of the facts and

circumstances which are brought in evidence, it is clear that the accused had procured necessary materials such as gun powder, cap etc. from the shop of PW.6 and assembled an explosive device, this finding is against the evidence adduced in the case. The evidence adduced in this case will not reveal that the accused had at any time purchased gun powder. The alleged disclosure statement given by the accused itself did not reveal that he had purchased gun powder at any time. No witness was examined to prove that gun powder was purchased by the accused from the shop of PW.6. Therefore, the observations made by the court below and the finding quoted above are contrary to the evidence and without any basis. The court could not have entered a finding that the accused had procured gun powder and assembled an explosive device and the same technic used for blasting rock could easily be used for making an explosive device and not much technical knowledge is required for doing so. There is absolutely no evidence to show that the accused is in any way connected with the blasting of rocks or he was working in a quarry or like place or that he had acquired any technical knowledge to make a country explosive device. In the absence of any evidence on record, the conclusion arrived at by the court below that the accused had procured gun powder used for blasting is wrong and contrary to the evidence adduced in the case . The prosecution has failed to prove that

the accused was in possession of the materials which could be used for making explosive device which was allegedly used for the offence and for blasting the deceased to death.

12. The next piece of evidence which is relied upon by the prosecution is the medical evidence. The court below found that the nature of injuries sustained by the deceased which are noted in Ext. P5 are blast injuries and that those injuries revealed from Ext.P6 wound certificate relating to the accused are also blast injuries. This finding is also not fully supported by the evidence. PW.11 is the doctor who was examined to prove the injuries on the accused. His evidence reveals that he had not treated the accused and he was only marking a document - the wound certificate, which was prepared by another doctor. It is not in evidence that the said doctor is not available for examination. Ext.P6 is sought to be proved as secondary evidence without any evidence to introduce secondary evidence. Even if Ext.P6 is accepted and the evidence of PW.11 is totally accepted, there is nothing in his evidence to show that the accused had sustained any blast injuries. there were only incised injuries and a lacerated wound with compound fracture, one abrasion etc. on his body; but no blast injury is noted. Pw.11 has stated that any of the injuries is not sustained by as a result of the blast. Therefore, the finding of the court below that the

accused has sustained blast injury is not supported by any evidence.

13. It is observed in para 36 of the judgment of the court below that all the injuries sustained by the deceased were as a result of blasting. PW.10 is the doctor who was examined to prove the antemortem injuries on the deceased. he has deposed that he conducted autopsy on the body of the deceased but only Injury No.1 was noted as blast injury. As many as 12 more injuries were sustained by the deceased which are noted as antemortem injuries. Those would include Injury No.2 which is a contusion 14 x 10 x 1 cm. on the left side of the front of chest just outer to the midline and 5 cm. below the collar bone, seen on dissection. It is clear from the description of Injury No.2 that it is an injury seen as dissected which has affected the internal part of the body. The doctor, in cross examination, admitted that he cannot say the cause of the said injury. He has no case that the said injury, which is of a considerable measurement, was caused due to the blast. There are several other injuries which are of similar nature and measurement which include contusion, fracture, multiple lacerated wounds, crushed lacerated wounds, lacerated wound, abrasion, contusion etc. on several parts of the body of the deceased and it has not been brought out from the evidence of PW.10 that those injuries are caused due to blast. it was the duty of the prosecution to bring out from the evidence of the doctor

as to how the material injuries were caused to the deceased. If it was as a cause of blasting that all the 13 injuries were caused, it should have been explained through the evidence of PW.10. But the prosecution has failed to do so. Resultantly, there is no explanation as to how various lacerated wounds, crushed lacerated wounds, contusions etc. of considerable measurements were caused to the deceased Thankamani. It has to be remembered at this juncture that it has come out from the evidence of the neighbours that they had heard a cry of the deceased and the blast was heard only after some time. In such circumstances, the prosecution should have proved beyond all reasonable doubt as to how the deceased Thankamani sustained several other injuries which are of considerable nature and measurement which prima facie appeared to be caused due to reasons other than blasting. In the light of the specific admission made by PW.10 that he cannot say how Injury No. 2 could be caused, the prosecution has a duty to explain and satisfy the court that the injury sustained by the deceased were due to blast. But that was not done in this case and it is not clear as to how the twelve antemortem injuries were caused to deceased Thankamani. At any rate, the finding entered into by the court below that the injuries were caused to the deceased Thankamani by blasting cannot be sustained. The medical evidence is not explaining the circumstances which indicate that

something more had happened than a blast. It is relevant to note that despite the fact that the accused was admittedly present at the scene, the investigating officers were not able to collect information from him as to how those injuries could be caused to the deceased. These circumstances raise a doubt on the prosecution case rather than it supports the case set up by the prosecution that deceased Thankamani sustained only blast injuries.

14. In this connection, it is also significant to note that the cause of death of deceased Thankamani is due to the injuries sustained to the head and chest. Though according to the prosecution, those could be by a blast, only Injury No.1 is stated to be a blast injury as per the evidence of Pw.10. The medical evidence reveals that Injury No.1 alone is a blast injury which was caused only to the chest. Therefore, evidently, there are other injuries caused to the deceased which are not explained by the prosecution whether it was caused due to a blast or not. The manner in which the fatal injuries are caused to deceased Thankamani is a fact which has to be proved by the prosecution. But it is not even explained and not proved. Therefore, the finding entered into by the court below that injuries are sustained by the deceased due to blasting, cannot be supported in the light of shabby medical evidence which does not reveal that deceased died due to blast injuries to the head.

15. Thus, all the material findings entered against the accused and in support of the prosecution case to enter a finding of guilt against the accused are unsustainable. Before closing, we would like to point out certain facts which would be worthy to be mentioned at this juncture, which indicate the innocence of the accused rather than his involvement in the crime. For example, the definite case of the prosecution is that the room in which the accused and deceased were lying was locked from inside and it was opened by force after the police reached the scene. But the evidence of PW.7 who has alleged to have given the house on rent to the accused who was examined as PW.7, reveals that only the back door in the room has latches. The person alleged to have rented out the room to the accused does not have a case that the front door was also having latches which could be closed from inside. He has specifically stated that only the back door has latches. It is also revealed from his evidence that he is the person who had gone to the police and police has come to the scene within a short time. His evidence disclose that when he reached the house, the neighbours have collected there and they were all inside the house. when police reached the house, according to PW.7, the neighbours were already inside the house. This would indicate that the case set up by the prosecution that the house was opened by force from behind by the police may not be correct. PW.4,

who is also a neighbour who rushed to the scene, has given evidence that he did not note whether the front door was opened, though he made an attempt to convince the court that the back door was opened by force by the police. When the evidence of PW.7 is read along with the evidence of PW.4, the possibility of the front door being not in a position to be locked cannot be ruled out. The evidence of PW.7 specifically reveals that by the time police came to the scene, people of the locality were inside the room where the incident occurred and there were latches only for the back door and not to the front door. The evidence of PW.4 also reveals that he could not say from which side the police came and opened the door. Therefore, the incriminating circumstance pointed out by the prosecution that the door was locked from inside and the accused and the accused alone would be culprit cannot be swallowed without a pinch of salt.

16. In this context, it is relevant to note that the evidence of PW.4 would reveal that he had heard some sound from the back side of the house when he reached and that he could not confirm whether there was anybody inside the latrine which was in the same compound. The nature of injuries seen on the body of the accused is also to be commented upon at this juncture. The doctor PW.11 gave evidence that there were two incised wounds of considerable length on the neck of the accused, which could be

caused by left hand. There is no evidence to show that the accused is a left hander. It is brought out from the evidence of PW.11 that both the injuries which were caused to the neck exposed the larynx. According to the doctor, the depth of the injury could not be said since the larynx was exposed. The doctor has stated that nobody can say the depth of the injury because it was already exposed. He has stated in cross examination that 'exposed' means it was cut and opened. The severity of the injury can easily be understood by the nature of the injury as disclosed from the evidence of PW.11. It has also come out in his evidence that the accused had another incised wound below his lap. Though the doctor would say that the injuries on the throat are self inflicted, there is no explanation as to how the incised injury could be caused on the lap of the accused. It is not satisfactorily explained how the injuries of similar nature are caused to the neck which exposed the larynx and left it cut and opened. As already held earlier, there is no explanation for the injury sustained on the right hand of the accused which is a lacerated wound with compound fracture of the right elbow extending to the fore arm. He had also other abrasions. Thus, the injuries on the accused are not satisfactorily explained by the prosecution. This is a circumstance which favours the accused rather than supporting the prosecution. In spite of the questioning of the accused, the investigating

officers failed to get explanation how those injuries were caused to the accused.

17. It is relevant to note that the accused had sustained wound cutting open the larynx which would normally leave him with inability to speak. But it is most relevant to note that in the wound certificate Ext.P6 prepared on his examination on 20.11.1998 at 7.55 AM it is noted that the injuries were caused due to blast and suicidal cut throat. From where this allegation came is a mystery. The prosecution could not prove as to whether those injuries were caused by blast. The history and the alleged cause of injury would not have been proved by the accused. But even at the time the allegation was made to the doctor that there was suicidal cut throat and blast injury it necessarily would not have been procured from the accused. All these would raise a doubt on the prosecution case.

18. As per the prosecution case, the accused and deceased were living together as husband and wife leaving their respective spouses and family, for the past six years prior to the incident. Even according to the prosecution records, they did not indulge in any quarrel and there is no case for anybody that they used to quarrel with each other. On the other hand, it appears that in spite of the invitations by the deceased's son on several occasions to come back and join the family, the deceased was sticking on to

the accused, which reveals the stronger relationship between the deceased and the accused rather than developing the motive to do away with the deceased. The evidence adduced by the prosecution that there was quarrel is only a subsequent development at the time of examination of certain witnesses and even at the time of evidence they were not coming forward with any clear picture on the quarrel which took place on any day. Though there are two other families residing in the same building, they do not have a case that there were frequent quarrels in the house and that they were not on cordial terms.

19. Taking all these facts and circumstances into consideration, we find that the prosecution did not prove any of the circumstances which would prove the guilt of the accused. The prosecution failed to establish that the accused committed the offence as alleged by the prosecution. The prosecution is bound to prove each and every circumstance conclusively. this was not done. Therefore, the the conviction and sentence passed against the appeal are unsustainable and liable to be set aside.

20. As regards the conviction entered against the accused under Section 3 of the Explosive Substance Act, there is no evidence to prove that he had kept any explosive article as alleged by the prosecution.

21. In the result, the accused is found not guilty of offence under Section 302 IPC and under Section 3 of the Explosive Substance Act 1908 and he is acquitted of the said offences. He is set at liberty forthwith. He shall be released from prison forthwith in case his detention is not found necessary in connection with any other case. The Registry shall issue release order to the Superintendent of Jail, concerned, where the appellant is under detention.

The Criminal Appeal is allowed as above.

P.R. RAMAN,
(JUDGE)

K. HEMA,
(JUDGE)

knc/-